



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/163761

PRELIMINARY RECITALS

Pursuant to a petition filed February 06, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 11, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether jurisdiction is present to review Petitioner's appeal because of the doctrine of claim preclusion.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pang Thao Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a Notice of Decision dated September 3, 2014 that informed Petitioner that his FoodShare benefits were to be reduced effective October 1, 2014 from \$79.00 to \$16.00. He filed an appeal with the Division of Hearings and Appeals in September and FoodShare benefits were

continued at the \$79.00 September 2014 level pending the outcome of that appeal. A hearing was scheduled for October 9, 2014 but Petitioner did not appear and the case was dismissed on October 10, 2014. Division of Hearings and Appeals case #FOO-160620. There was no request for a rehearing or Circuit Court appeal.

3. Petitioner's FoodShare were issued for November 2014 in the amount of \$16.00.
4. The agency issued a February 3, 2015 overpayment notice for the \$63.00 of continued FoodShare benefits for the month of October 2014.
5. Petitioner filed an appeal with the Division of Hearings and Appeals (DHA) on February 6, 2015 to contest the November 2014 FoodShare issuance of \$16.00 and the February 3, 2015 overpayment notice. The overpayment case is DHA case #FOP 163759 and the subject of a separate decision concluding that Petitioner was overissued FoodShare in the amount of \$63.00 for October 2014.

DISCUSSION

In reviewing this case and its companion case, FOP-163759, it became apparent that this appeal challenges the same reduction that a prior appeal contested – the reduction of Petitioner's FoodShare from \$79.00 to \$16.00 effective October 1, 2014. This appeal is the same appeal filed by Petitioner in September 2014 to contest the FoodShare reduction that was to begin in October 2014. That reduction was affirmed by the dismissal of Petitioner's September 2014 appeal for failing to appear.

Claim preclusion (formerly known as "res judicata") requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as "collateral estoppel") requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Ibid.*, p. 550.

Petitioner has had his "day in court" on the merits of his appeal about the \$63.00 reduction in FoodShare effective October 2014 via the October 9, 2014 hearing. Thus this matter has been decided in a final decision, and that result is binding as a matter of fact and law. The instant appeal claim is precluded by that result, under the doctrine of claim preclusion. In short, Petitioner had his opportunity to heard, he did not appear and he lost.

CONCLUSIONS OF LAW

That the instant appeal is precluded by the doctrines of claim preclusion as the claim in the instant appeal was decided in a final decision in DHA Case No. FOO-160620 dated October 10, 2014.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of April, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 8, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability